143-649

See No. 1049

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1043.~~ 1050

CHARLES STERNBACH, ABRAHAM HERRMAN, DANIEL W. HERRMAN, JAMES WILKINSON, AND MORRIS STERNBACH, TRADING UNDER THE FIRM NAME OF H. HERMANN, STERNBACH & CO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 28, 1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1643.

CHARLES STERNBACH, ABRAHAM HERRMAN, DANIEL W. HERRMAN, JAMES WILKINSON, AND MORRIS STERNBACH, TRADING UNDER THE FIRM NAME OF H. HERMANN, STERNBACH & CO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 2, 1891.

1 U. S. Circuit Court for the Southern District of New York.

In the Matter of the Application of H. HERRMAN, STERNBACH & Co. upon Certain Merchandise Entered by the Fulda October 8th, 1890.

To the circuit court of the United States for the southern district of New York:

The petitioners above named allege that they now are and at the times hereinafter named were copartners, doing business in the city of New York under the firm name of H. Herrman, Sternbach & Co.

That on or about the dates hereinafter set forth said firm imported and entered at the port of New York certain merchandise, to wit, certain manufactures of flax and manufactures of cotton, by the Fulda, entered October 8th, 1890.

That thereafter the collector at that port proceeded to ascertain, fix, and liquidate the rate and the amount of the duties to be paid on said merchandise at the rate of forty-five per cent. ad valorem.

That your petitioners, being dissatisfied with said rate and amount, and within ten days after said determination of said collector, but not before said ascertainment and liquidation of duties, gave notice in writing to the collector, setting forth therein distinctly
2 and specifically in respect to said entry and payment the reasons for their objections thereto, and paid the full amount of the duties and charges ascertained to be due thereon.

That thereafter the collector transmitted the invoice and all the papers and exhibits to the board of general appraisers, who, on the 16th day of December, 1890, returned that they had examined and decided as to the said entry.

That your petitioners are dissatisfied with said decision of said board as to the construction of the law and the facts respecting the classification of said merchandise and the rate of duty imposed thereon, and the following is a concise statement of the errors of law and fact complained of:

The errors of fact were as follows:

1. In holding that the alleged act of Congress entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," and purporting to be approved October 1, 1890, ever passed the House of Representatives and Senate in manner and form as it now appears of record in the Department of State.

2. In holding that the bill entitled as above, which passed the House of Representatives and Senate, was ever presented to the President, as required by the Constitution, or ever signed or approved by him.

The errors of law were as follows:

1. In holding that the alleged act of 1890 is not unconstitutional and void by reason of the third section thereof.

3 2. That the alleged act of 1890 is not unconstitutional and void by reason of the provisions contained in section one and

Schedule E and paragraph 231 of said act relating to bounties on sugar.

3. In holding that said act had been passed by the Senate and House of Representatives and signed by the President in accordance with the Constitution.

4. In holding that the merchandise in said entry and invoice referred to is dutiable at the rate of forty-five per cent. ad valorem under the alleged act of October 1, 1890, instead of being dutiable under the statutes in force prior to October 6th, 1890, viz., section 735, Schedule I, of the act of March 3, 1883, as colored cotton cloths exceeding 200 threads to the square inch and valued at over fifteen cents per square yard and dutiable at the rate of forty per centum ad valorem.

Wherefore your petitioners apply for a review of the questions of law and fact involved in the decision of said board.

H. HERRMAN, STERNBACH & CO.

Endorsed: No. 64. U. S. circuit court, southern district of New York. In the matter of the application of H. Herrman, Sternbach & Co. upon certain merchandise entered by the Fulda October 8th, 1890. Statement & summons to return record. Stanley, Clarke & Smith, attorneys for petitioners, 120 Broadway, N. Y. city. U. S. circuit court. Filed Dec. 23, 1890. John A. Shields, clerk.

4 U. S. Circuit Court for the Southern District of New York.

In the Matter of the Application of H. HERRMAN, STERNBACH & Co. upon Certain Merchandise Entered by the Fulda October 8th, 1890. No. 64.

Know all men by these presents that I, Abraham Herrman, of the firm of H. Herrman, Sternbach & Co., am held and firmly bound unto the United States of America in the sum of one hundred dollars, to be paid to the said United States of America.

For the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents,

Sealed with my seal and dated the 22nd day of December, in the year of our Lord one thousand eight hundred and ninety.

Whereas Charles Sternbach, Abraham Herrman, Daniel W. Herrman, James Wilkinson, and Morris Sternbach, trading under the firm name of H. Herrman, Sternbach & Co., have applied to the circuit court of the United States for the southern district of New York for a review of the question of law and fact involved in certain decisions of the board of United States appraisers made upon the entry of certain merchandise imported by them, per S. S. Fulda, October 8th, 1890:

5 Now, therefore, the condition of this obligation is such that if the above-named Charles Sternbach, Abraham Herrman, Daniel W. Herrman, James Wilkinson, and Morris Sternbach, trading under the firm name of H. Herrman, Sternbach & Co., shall prosecute said proceeding with effect and pay all damages and costs

which shall be awarded against them therein if they shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

ABRAHAM HERRMAN.

Sealed and delivered and taken and acknowledged this 22nd day of October, one thousand eight hundred and ninety, before me—

ABRAHAM HERRMAN.

L. GOTTHOLD.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

Abraham Herrman, being duly sworn, deposes and says that he resides in the southern district of New York, in the city of New York; that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

Sworn to this 22d day of December, A. D. 1890, before me—

LEWIS GOTTHOLD,
[SEAL.] *Notary Public*, 161, *N. Y. Co.*

This bond approved as to form and amount and sufficiency of surety.

Dated New York, December 23d, 1890.

E. HENRY LACOMBE.

6 Endorsed: No. 64. U. S. circuit court, southern district of New York. In the matter of the application of H. Herrman, Sternbach & Co. upon certain merchandise entered by the Fulda October 8th, 1890. Bond. Stanley, Clarke & Smith, attorneys for petitioners, 120 Broadway, N. Y. city. U. S. circuit court. Filed Dec. 23, 1890. John A. Shields, clerk.

7 At a stated term of the United States circuit court for the southern district of New York, held at the U. S. court and post-office building, in the city of New York, on the 23d day of December, 1890.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of H. HERRMAN, STERNBACH & Co. upon Certain Merchandise Entered by the Fulda October 8th, 1890. No. 64.

On reading and filing the petition herein, and on the application and motion of Stanley, Clarke & Smith, attorneys, it is ordered that the board of appraisers of the port of New York return to this court the record and the evidence heretofore taken by them, together with a certified statement of the facts involved in the case and their decisions thereon.

E. HENRY LACOMBE.

8 Suit 64.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Return of the Board of General Appraisers.

In the Circuit Court of the U. S. for the Southern District of New York.

In the Matter of the Appeal of H. HERRMAN, STERNBACH & Co. from the Decision of the Board of General Appraisers.

The board of general appraisers, in compliance with the order of the court in the above case, make the following return of the record, evidence, and facts and their decision thereon:

First. They state that on the 20th of November, 1890, the letter hereto attached, marked Exhibit A, was received from the collector of customs at New York, transmitting the protest, No. 3016 A, 14476, of H. Herrman, Sternbach & Co. (Exhibit B) against his decision as to the rate of duty chargeable on certain manufactures of flax and manufactures of cotton imported by them, per S. S. "Fulda," October 7th, 1890.

Second. That on the 16th of December, 1890, said protest was duly considered and determined by the board (and they made a decision thereon), consisting of George H. Sharpe, Henderson M. Somerville, and Charles H. Ham—a copy of their decision is
9 hereby annexed, marked Exhibit C; that no evidence was taken by the board in the consideration of said case; that all the facts involved in the case are fully stated in the opinion and decision above mentioned.

Certificate of Facts.

That said board of appraisers hereby certify further that they found the facts of the case to be as stated in the report of the collector.

And that the facts as to the enactment by Congress of the law entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1st, 1890, commonly known as the new tariff law, to be the same facts as those set out in the accompanying decision made in the case of Marshall Field & Co. on December 14th, 1890, which is referred to in the decision of the board as G. A. 203, and is so numbered in the decisions of the board officially reported by the Treasury Department.

GEO. H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. Gen'l Appraisers.

10 G. A. 203.

NEW YORK, *December* 14, 1890.

Before the board of United States general appraisers, at New York, December 14, 1890.

In the Matter of the Protest, 2051*b*, of MARSHALL FIELD & Co. against the Decision of the Collector at the Port of Chicago, Assessing Certain Rates of Duty on Imported Merchandise.

Opinion by Somerville, General Appraiser.

The question raised in this case is one of great importance, and we are fully aware of the fact that its decision is pregnant with results of the gravest character. The appellants in their protest assail as unconstitutional the act of Congress entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, commonly known as the McKinley tariff act. It is insisted that this act is void and of no effect, and for this reason that the duties assessed on certain imported merchandise under its provisions were illegally assessed; that the tariff act of March 3, 1883, still remains in full force, and that the rates of duty imposed by it continue unrepealed.

The first ground upon which this contention is based is that an important and material part of the measure as enacted by
11 Congress was omitted or clerically expunged in the engrossed law as signed by the President. The law as passed, therefore, it is said, was never approved, and the law as approved was never passed, and this variance, it is urged, vitiates not only the omitted section but the entire law.

The proceedings of Congress, of which we are required to take judicial notice, bear out the fact that the bill which passed both the House of Representatives and the Senate contained the following clause as part of section 30: * * *

SEC. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5. It shall be the duty of the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the Treasury not otherwise appropriated.

12 The Senate opposed this clause of the law and receded from their opposition only after a conference was ordered.

In engrossing the bill the clause in question was omitted apparently by clerical error, and the President signed the engrossed bill in its defective condition.

In deciding upon the legal validity of statutes assailed for unconstitutionality courts always approach the consideration of the subject with great caution. It is a settled maxim that every law will, in the first instance, be presumed to be unconstitutional until the contrary is made to clearly appear. All reasonable doubts must be resolved in favor of the validity of the given law. In other words, to be in doubt is to maintain the law. (Cooley on Const. Lim., 6th ed., 216.)

It may be conceded that a bill can become a law only when it has gone through all the forms made necessary by the Constitution of the United States to give it validity and force as such. It must be passed by both houses of Congress and approved by the President or, in the absence of such approval, pass through other forms prescribed by the Constitution. * * *

In some adjudged cases the rule is broadly stated to be that if a bill which is passed by the General Assembly of a State varies materially in substance and legal effect from that which is approved by the Governor, then there exists such a want of legal and actual identity between the bill passed and the one approved as
13 that neither of them acquires the force of a valid and constitutional enactment. (Jones *vs.* Hutchinson, 43 Ala., 721; Moody *vs.* The State, 48 Ala., 115.)

In the case of Moog *vs.* Randolph, 77 Ala., 577, the supreme court of Alabama, following this principle, adjudged a revenue law to be void which had been passed by both branches of the Legislature because the enrolled bill as approved by the Governor, by clerical omission, failed to contain a very important and material clause, as to which there had been a controversy between the two houses, resulting in an agreement after conference. Two of the judges concurred in the opinion, but Mr. Justice Stone doubted the correctness of the conclusion that the entire law was vitiated by the conclusion, holding, however, that the defect rendered void the omitted clause.

The same question, in effect, again arose before the same court in the later case of Stein *vs.* Leeper, 78 Ala., 517. There a bill had been passed by both houses of the Alabama Legislature prohibiting the sale of spirituous liquors in a large number of specified localities.

In enrolling the bill one of these localities was omitted from the title through clerical mistake. This omission operated legally to produce the same effect as if it had occurred in the body of the bill, in view of the constitutional requirement that "each law shall contain but one subject, which shall be clearly expressed in its title."
14 This imperfect bill was approved by the Governor. The court held that the omission vitiated the law only partially and not in toto; that it operated to expunge the particular locality omitted, but that the residue of the law was valid and would be

given full force and operation in execution of what appeared to be the concurrence of the legislative and executive intention and to the extent of such concurrence. The court was of opinion that the provisions relating to the different localities were not so connected with or dependant on each other, but that the law could be executed in substantial conformity with the legislative intention by giving it validity so far as approved. "After expunging the unconstitutional portions," it was said, "the remaining parts are complete in themselves and capable of being executed in accordance with the legislative intent. As to the remaining parts of the statute there was a concurrence of both houses of the General Assembly and of the executive." This was clearly intended as a modification of the doctrine announced in the case of Moog *vs.* Randolph, *supra.*

This doctrine seems to be in accord with the settled rule adopted by the courts in passing on laws which are in part constitutional and in part unconstitutional. Legislative enactments are not necessarily adjudged void by reason of embracing or being associated in the same act with other parts which are unconstitutional. The test is thus formulated by Judge Cooley: "If when the unconstitutional part is stricken out that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained." (Cooley's Const. Lim., 6th ed., 210, 211.) It is only when the two parts are "so mutually connected with and dependent on each other as conditions, considerations, or compensations for each other as to warrant a belief that the Legislature intended them as a whole, and that if all could not be carried into effect the Legislature would not pass the residue independently, and some parts are unconstitutional," that all the provisions must fall together. (Allen *vs.* Louisiana, 103 U. S., 80.) It was on this principle that the Supreme Court of the United States, in Tierman *vs.* Rinker, 102 U. S., 123, held that a State law forbidding the sale of spirituous might be void as to all imported liquors and valid as to all others. Numbers of other analogous cases could be cited, but a further elaboration of the subject in this opinion is not deemed necessary.

The portion of the enactment under consideration which has been omitted from the law approved by the President was but a single section. It related to a separate and severable subject—that of rebates on tobacco. It constitutes but one of fifty-five sections of the entire act. In this law there are fourteen voluminous schedules of subjects and seven hundred and sixty-one separate paragraphs, including the free list of two hundred and eighty-nine paragraphs. The number of articles embraced are innumerable and beyond arithmetical computation.

The question is, shall the whole law fail as unconstitutional and void because of a clerical omission of the one section relating to the one article of tobacco?

The inquiry is not entirely free from doubt. There are forcible reasons to be urged on both sides of the contention. But, as we have said, under a well-settled canon of construction, to be in doubt is to

sustain the law. We are not sufficiently clear in the conviction that the clerical omission of this section from the approved bill, under the rules of construction which are to guide us, should vitiate the entire law. The more conservative view is to hold that it renders invalid the omitted section only, and we accordingly so decide.

There is another ground of objection to the law which we need notice but briefly. It is contended that section 3 of the law is also unconstitutional because it invests in the President of the United States the power to suspend laws and impose duties within his discretion. We construe the objection to be that the chief executive is vested with legislative power, contrary to the provisions of article 1, section 1, of the Federal Constitution, which provides that "all legislative powers shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

Section 3 has reference to securing reciprocal trade with foreign countries which produce and export sugars, molasses, coffee, tea, and other named articles, which are admitted free of duty into the United States.

17 It is provided that so often as the President shall be satisfied that any such foreign government "imposes duties or other exactions upon the agricultural or other products of the United States" which he may "deem to be reciprocally unequal and unreasonable," in view of the free entry of the articles above named, he "shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act" relating to the free introduction of said articles "for such time as he may deem just," and in such case and during such suspension "certain specified duties shall be levied, collected, and paid" upon such articles of sugar, molasses, coffee, etc., the product of or exported from such foreign countries.

The authority vested in the executive is the power to suspend the operation of one law with a legislative declaration that another law fixed in its terms shall thereupon go immediately into effect. It has been the practice from the foundation of the Government to confer on the President of the United States the power to suspend laws or by proclamation to put other laws in operation on certain contingencies to be determined by him. This is not deemed a vesting of legislative power in such officer. It is the familiar case of making a law, certain and fixed in its terms, operative on a named contingency, the existence of which is to be determined by the President. The statute books, Federal and State, are filled

18 with laws of this character, and their validity has generally been sustained, unless prohibited by the particular constitution of the State where they were enacted.

Moreover, the invalidity of section 3 would not make the entire tariff act fall under the rule announced in the first part of this opinion. This section might be stricken out and effect could still be given to the remainder of the law so as to substantially effectuate the general scope of the legislative intent.

The decision of the collector is affirmed.

The invoice received with this protest is herewith returned.

GEO. H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. Gen'l Appraisers.

Collector of customs, Chicago, Ill.

(1 enclosure.)

A true copy.
Attest:

J. R. LAKE,
Chief Clerk.

19

EXHIBIT "A."

H. E. E.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *Nov. 19th*, 1890.

To the hon. board of U. S. gen'l appraisers, New York.

GENTLEMEN: In pursuance of the requirements of section 14 of the act of June 10, '90, I transmit herewith the protest, # 3016 A, 14476, of Herrman, Sternbach & Co. from the assessment of duty by this office at the rate of 45% ad valorem on certain so-called "m'f's cotton" and the alleged assessment of duty at the rate of 45% ad valorem on certain so-called "m'f's flax" imported by them, per "Fulda," Octo. 7, '90, claiming that the tariff act of Oct. 1, 1890, is unconstitutional and that the goods are dutiable under the provisions of the act of March 3, 1883.

I have to state that the goods were returned by the appraiser upon the invoice as "colored cottons over 200 threads over 15c. per sq. yard" and "m'f's flax over 100 threads." Duty was accordingly assessed thereon at the rate of 45% ad valorem on the so-called "m'f's cotton" and at 35% ad valorem on the so-called "m'f's flax" under the provisions of paragraphs 348–371 of the act of Oct. 1, 1890.

No duty at the rate of 45% ad valorem has been assessed on the so-called "m'f's flax."

The entry and invoice covered by the above protest are enclosed herewith.

The naval officer concurs in the decision of this office.

20 Very respectfully,

J. J. COUCH,
Special Deputy Collector.

(3 enc.)

Endorsed: Exhibit "A.". C 1694 Po., 3016 A. Custom-house, collector's office, New York city, Nov. 19th, 1890. J. B. Erhardt, collector. M't's cotton constg. 90. Protest, # 14476, of Herrman, Sternbach & Co. Office U. S. general appraisers, New York. Received Nov. 20, 1890. No. of enclosures, 3.

21 EXHIBIT "B."

476 BROADWAY, NEW YORK CITY, *October 24th*, 1890.

Hon. Joel B. Erhardt, collector of the port of New York, New York city.

SIR: We hereby protest against your liquidation, assessment, and ascertainment of duties as made by you on V. & C. 8113, one case of manufactures of flax and manufactures of cotton, entered by us for consumption per S. S. "Fulda," from Bremen, October 7th, 1890, entry No. 164,233.

You have assessed duties and liquidated the colored cottons in the above-mentioned case as liable to the duty of 45% ad valorem. We claim that the merchandise is dutiable under section 735, Schedule I, of the act of March 3rd, 1883, for the following reasons:

First. That the said act of March 3rd, 1883, is not and has never been repealed.

Second. That the alleged act of Congress entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," and purporting to be approved October 1, 1890, never passed the House of Representatives and Senate. E. No. 164,223.

Third. That the bill entitled as above which passed the House of Representatives and Senate has never been presented to the President, as required by the Constitution, and has never been signed or approved by him.

Fourth. That the said goods, wares, and merchandise de-
22 scribed in the invoice and entry referred to were dutiable under the statutes in force prior to October 6th, 1890, viz., section 735, Schedule I, of the act of March 3rd, 1883, as colored cotton cloths exceeding 200 threads to the square inch and valued at over 15c. per square yard, and should only pay a duty of 40% ad valorem, and are not dutiable under the act purporting to be entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," and purporting to have been approved October 1, 1890, because no such act was ever duly enacted in accordance with the requirements of paragraph two of section seven of article 1 of the Constitution of the United States, because, 1st, the bill which passed the House of Representatives and the Senate and which was entitled as above was not in fact presented to the President of the United States nor approved nor signed nor returned by him, and, 2nd, because the bill so entitled and which was presented to said President and purporting to have been signed by him on the 1st of October, 1890, and now on file in the State Department, at Washington, never in fact passed the House of Representatives or the Senate of the United States as presented to said President, but was other and different from any bill which actually passed said House of Representatives and Senate.

Fifth. That the alleged act of 1890 is unconstitutional and void by reason of the third section thereof.

Sixth. That the power purporting to be given to the President by

said section to continue and suspend and impose duties or to
23 do either of said acts is a power vested by the Constitution in Congress alone, and cannot lawfully be delegated to the President.

Seventh. That the said last-mentioned clause contravenes section 1 and section 8 of article 1 and other provisions of said Constitution.

Eighth. That the said alleged act of 1890 is unconstitutional and void by reason of the provisions contained in section one and Schedule E and paragraph 231 of said act, relating to bounties on sugar.

Ninth. That Congress had no power to direct, enact, or authorize the payment, out of moneys in the Treasury raised by taxes or duties, or otherwise, to the producers of sugar a bounty of two cents a pound, or of any other sum whatever, nor had Congress any power to authorize the Secretary of the Treasury to draw warrants on the Treasurer of the United States for such sums as may be necessary to make payments of bounties, as provided in said act, section one, and paragraph 235 of said act, not to impose the duties mentioned in the act for the purpose, in whole or in part, of raising money to pay such bounties.

We pay the amount you claim and demand under protest, and only to obtain possession of the goods, and hold you and the Government responsible and liable for the amount.

Yours truly,

H. HERRMAN, STERNBACH & CO.

24 Endorsed: 1694, 14476, 3016 A. Herrman, Sternbach & Co. Fulda. Mf. of flax. Exhibit "B." Custom-house, New York, Oct. 27, 1890 Received.

Vessel.	Entry.	Liq'ed.	Protested.
"Fulda."	Oct. 8, 1890.	Oct. 25, 1890.	Oct. 27, 1890.

25 J. R. L. Form 21. C. H. H.

Affirmance of Collector's Decision.

EXHIBIT "C."

Classification.
In replying refer to
3016 A.

OFFICE OF THE BOARD OF U. S. GENERAL APPRAISERS,
534 CANAL STREET, NEW YORK, *Dec. 16th*, 1890.

Collector of customs, New York, N. Y.

SIR: Your decision as to the rate and amount of duties chargeable on certain so-called man'f's of cotton & man'f's — flax imported in the vessels named and assessed with duty at the rate of 45% & 35% ad val., respectively, being in accordance with paragraphs 348 & 371 of the tariff act of Oct. 1st, 1890, and with the decision of the board of United States general appraisers dated Dec. 15th, 1890, No.

(2051 B), is hereby affirmed on the protest described below and which were received with your letter of Nov. 19, 1890. The invoices and entries received with your letter are herewith returned.

Respectfully yours,

GEORGE H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. General Appraisers.

A true copy.
Attest: J. R. LAKE,
Chief Clerk Board Gen'l App'rs.

2 inclosures.

26 3016 A, 14476. H. Herrman, Sternbach & Co. Fulda. Oct. 8, '90. 3016 A. (Form No. 21.) Office of the board of U. S. general appraiser-, New York. Dec. 16, '189–. Coll. N. Y. Affirmance of collector's decision. Manuf. of cott. & manuf. of flax.

Endorsed: No. 64. Circuit court U. S., south. dist. N. Y. In the matter of the application of H. Herrman, Sternbach & Co. for review of decision of general appraisers. Return of the board of general appraisers. U. S. circuit court. Filed Jan. 13, 1891. John A Shields, clerk.

27 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 24th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable E. Henry Lacombe, circuit judge.

Suit No. 64.

In the Matter of the Appeal of CHARLES STERNBACH, ABRAHAM HERRMAN, DANIEL W. HERRMAN, JAMES WILKINSON, and MORRIS STERNBACH, Trading under the Firm Name of H. HERRMAN, STERNBACH & Co., from the Decision of the Board of U. S. General Appraisers.

The above cause coming on for hearing and determination before this court on the application of H. Herrman, Sternbach & Co., importers, for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein, and on the return of the board of general appraisers of the record and the evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon: now, after hearing Henry C. Platt, assistant U. S. attorney, on behalf of the collector, for affirmance, and Messrs. Stanley, Clarke & Smith, counsel for H. Herrman, Sternbach & Co., importers, for reversal, on motion of Edward Mitchell, U. S. attorney—

28 It is ordered, adjudged, and decreed that there was no error in said proceedings before said board of general appraisers, and that their decisions herein be, and the same are hereby, in all things affirmed, with costs, taxed at one dollar and sixty-five cents.

E. HENRY LACOMBE.

Endorsed: No. 64. U. S. circuit court, southern district of New York. In the matter of the appeal of Chas. Sternbach and others, trading under the name of H. Herrman, Sternbach & Co., from the decision of the board of U. S. general appraisers. Decree of affirmance. Edward Mitchell, United States attorney. U. S. circuit court. Filed Feb. 24, 1891. John A. Shields, clerk.

29 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

In the Matter of the Application of H. HERRMAN, STERNBACH & Co. upon Certain Merchandise Entered by the Fulda, October 8th, 1890.

Know all men by these presents that we, Daniel McKeever and William Simpson, of New York city, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars, to be paid to the said United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas the above-named H. Herrman, Sternbach & Co. have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named H. Herrman, Sternbach & Co. shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

DANIEL McKEEVER. [SEAL.]
WILLIAM SIMPSON. [SEAL.]

Sealed and delivered and taken and acknowledged this 25th day of February, 1891, before me—

L. GOTTHOLD.

30 [Endorsed:] No. 64. U. S. circuit court, southern district of New York. In the matter of the application of H. Herrman, Sternbach & Co. upon certain merchandise entered by the

Fulda, October 8th, 1890. Bond for damages and costs on appeal. Approved: E. Henry Lacombe. U. S. circuit court. Filed Feb. 26, 1891. John A Shields, clerk.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

Daniel McKeever and William Simpson, being duly sworn, doth depose and say, each for himself, that he is worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

DANIEL McKEEVER.
WILLIAM SIMPSON.

Sworn to this 25th day of February, A. D. 1891, before me—
LEWIS GOTTHOLD,
[SEAL.] *Notary Public*, 172, *N. Y. Co.*

31 U. S. Circuit Court, Southern District of New York.

In the Matter of the Application of H. HERRMAN, STERNBACH & Co. upon Certain Merchandise Entered by the Fulda, October 8th, 1890. No. 64.

To the honorable the Supreme Court of the United States:

The appeal of H. Herrman, Sternbach & Co., the above-named petitioners and appellants, respectfully showeth—

That upon the 23rd day of December, 1890, the above-named H. Herrman, Sternbach & Co. filed their petition and application in the circuit court of the United States for the southern district of New York for a review of the questions of law and fact involved in the decision of the board of general appraisers in respect to the duties to be assessed upon their importation by the vessel above specified.

That on the 24th day of February, 1891, a final decree was made and pronounced, wherein it was adjudged and decreed that the action of said board of appraisers should be affirmed.

32 Wherefore these appellants appeal from the whole of said decree of said circuit court of the United States and respectfully pray that the decree of the said circuit court and all the proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed or modified and a decree made determining the rate of duty upon said importation, according to the prayer of said petitioners, or such other decree as to the said Supreme Court shall seem just.

Dated February 25th, 1891.

STANLEY, CLARKE & SMITH,
Attorneys for Appellants.

The foregoing appeal is allowed.

E. HENRY LACOMBE.

Due service of foregoing notice of appeal is hereby admitted.
Dated Feb'y 26th, 1891.

EDWARD MITCHELL,
U. S. Att'y & Att'y for Collector.

Endorsed: No. 64. U. S. circuit court, southern district of New York. In the matter of the application of H. Herrman, Sternbach & Co. upon certain merchandise entered by the Fulda October 8th, 1890. Notice of appeal. Stanley, Clarke & Smith, attorneys for appellants, 120 Broadway, N. Y. city. U. S. circuit court. Filed Feb. 26, 1891. John A. Shields, clerk.

33 At a stated term of the United States circuit court for the southern district of New York, held at the U. S. court and post-office building, in the city of New York, on the 25th day of February, 1891.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of H. HERRMAN, STERNBACH & Co. upon Certain Merchandise Entered by the Fulda, October 8th, 1890. No. 64.

This cause having come on to be heard, and the court having, on the 24th day of February, 1891, filed its decision herein affirming the action of the board of appraisers—

Now, therefore, I, E. Henry Lacombe, the judge making such decision, allow an appeal therefrom to the Supreme Court of the United States.

E. HENRY LACOMBE.

Endorsed: No. 64. U. S. circuit court, southern district of New York. In the matter of the application of H. Herrman, Sternbach & Co. upon certain merchandise entered by the Fulda, October 8th, 1890. Order. Stanley, Clarke & Smith, attorneys for appellants, 120 Broadway, N. Y. city. Due service of within order is hereby admitted. Dated Feb'y 26, 1891. Edw'd Mitchell, U. S. att'y, &c., att'y for collector. U. S. circuit court. Filed Feb. 26, 1891. John A. Shields, clerk.

34 UNITED STATES OF AMERICA, *ss:*

To the United States, Greeting:

You *and* hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of March, eighteen hundred and ninety-one, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein H. Herrman, Sternbach & Co. are appellants, to show cause, if any there be, why the judgment in the said appeal mentioned should not be reversed, modified, or corrected and speedy justice should not be done to the parties in that behalf.

Dated February 26th, 1891.

Given under my hand, at the city of New York, in the southern

district of New York, in the second circuit, the 26th day of February, 1891.

E. HENRY LACOMBE,
Circuit Judge.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Stephen G. Clarke, being duly sworn, deposes and says that he is of mature age, and on the 26th day of Feb'y, 1891, he served on the U. S. district attorney for the southern district of New York the within citation by delivering to him and leaving with him a copy of the said paper.

STEPHEN G. CLARKE.

35 Subscribed and sworn to before me this 27th day of Feb'y, 1891.

GILBERT E. ROGERS,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

Endorsed: United States Supreme Court. In the matter of the application of H Herrman, Sternbach & Co. upon certain merchandise entered by the Fulda, October 8th, 1890. Citation. Stanley, Clarke & Smith, attorneys for appellant, 120 Broadway, N. Y. city. U. S. circuit court. Filed Feb. 27, 1891. John A. Shields, clerk. Copy received. U. S. attorney's office, Feb. 26, 1891.

36 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 35, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of H. Herrman, Sternbach & Co. upon certain merchandise entered by the Fulda, October 8th, 1890, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the said United States the one hundred and fifteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 1643. Charles Sternbach, Abraham Herrman, Daniel W. Herrman, James Wilkinson, and Morris Sternbach, trading under the firm name of H. Herrman, Sternbach & Co., appellants, *vs.* The United States. Filed February 28, 1891.